Supreme Court, U.S.
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No. 99-929

In the
SUPREME COURT OF THE UNITED STATES

Rebecca McDowell Cook,
Petitioner,

v.

Donald J. Gralike and Mike Harman,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

JOINT APPENDIX

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United States District Court
Western District of Missouri

DOCKET ENTRIES

December 11, 1996–Complaint.

July 15, 1997–1st amended complaint for declaratory & inj relief.

August 7, 1997–First amended answer by defendant.

August 19, 1997–Motion by defendant Rebecca McDowell Cook to dismiss 1st amended cmp and suggs in support.

October 29, 1997–Motion by defendant Rebecca McDowell Cook to dismiss for failure to state a claim and suggs in support.

December 4, 1997–Memorandum of conf w/ counsel mailed on 12/10/97.

January 12, 1998–Motion by plaintiff Donald James Gralike for summary judgment.

January 15, 1998–Order by Judge D. B. Bartlett that dft's original mt to dism (doc #10), filed 4/25/97, is denied as moot; and 2) Defendant's Motion to dism pla's 1st amended cmp (doc no. 29, is gr as to cnt VI but denied in all other respects.

January 29, 1998–Order by Judge D. B. Bartlett granting motion to dismiss Count IV of first amd cmp for failure to state a claim [45-1] on Counts I, II, III, and V, dft's m for judgment on the pleadings is denied.

February 13, 1998–Motion by plaintiff Donald James Gralike for preliminary injunction.

February 18, 1998–Order by Judge D. B. Bartlett granting motion for summary judgment [59-1] 2) dft is permanently enjoined from implementing and enforcing Sections 15, 16, 17, 18, or 19 of Article VIII of the Missouri constitution. Terminating case.

February 19, 1998–Notice of Appeal by defendant from Dist. Court decision.

United States Court of Appeals
for the Eighth Circuit

DOCKET ENTRIES

February 20, 1998–Civil case docketed.

April 13, 1998–Brief filed - Brief of Appellant- Rebecca McDowell Cook.

April 29, 1998–Brief filed - Brief of Amicus-Curiae - Professor Kris W. Kobach on behalf of Rebecca McDowell Cook.

June 9, 1998–Motion of intervenor Mike Harman for leave to intervene on behalf of Donald Gralike.

June 10, 1998–Brief filed - Brief of Appellee - Donald James Gralike.

June 10, 1998–Brief filed - Brief of Amicus-Curiae - League of Women [Voters] on behalf of Donald James Gralike.

July 8, 1998–Judge order: granting Mike Harman's intervenor motion for leave to intervene on behalf of Donald James Gralike.

November 16, 1998–Argued and submitted in Kansas City, MO to Judges. Theodore McMillian, Circuit Judge, Floyd R. Gibson, Senior Judge, David R. Hansen, Circuit Judge. Elizabeth W. Lane for Appellant Rebecca McDowell Cook. Kris W. Kobach for Amicus on Behalf of Appellant Professor Kris W. Kobach. Arthur A. Benson for Intervenor on Appeal Mike Harman, Appellee Donald James Gralike. Rebuttal by: Elizabeth W. Lane.

August 31, 1999–The Court: Theodore McMillian, Floyd R. Gibson, David R. Hansen. Opinion filed by Theodore McMillian published, dissent by David R. Hansen, concur by David R. Hansen.

September 21, 1999–Mandate issued.

December 6, 1999–Notice from Supreme Court that appellant filed petition for writ of certiorari on November 29, 1999.

April 17, 2000–U.S. Supreme Court notice regarding petition for writ of certiorari.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 96-4417-CV-C-9

DONALD JAMES GRALIKE,
Plaintiff,
vs.
REBECCA McDOWELL COOK,
Defendant.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. JURISDICTION

1. Plaintiff Donald James Gralike is, and at all times relevant hereto was, a natural person and a resident of St. Louis, Missouri.

2. Defendant Rebecca McDowell Cook is the Secretary of State of the State of Missouri. Cook is, and at all times pertinent to this litigation was, a natural person who is a resident of Missouri and whose government office is located in Jefferson City, Missouri.

3. This is an action brought by plaintiff pursuant to 42 U.S.C. § 1983 to seek declaratory judgment and injunctive relief to redress the current and future deprivation, under color of Missouri state law of rights, privileges and immunities secured to plaintiff by Article I of and the First and Fourteenth Amendments to the Constitution of the United States of America.

4. Jurisdiction is conferred on this Court in regard to all counts of this Complaint by 28 U.S.C. §§ 1331 and 1343(a)(3).

5. At all times relevant to this Complaint, defendant acted under color and pretense of state law, to wit: under color of the Missouri Constitution and of statutes, ordinances, regulations, customs and usage's of the State of Missouri.

6. At all times relevant to this Complaint, defendant engaged in illegal conduct herein mentioned to the injury of plaintiff and deprived plaintiff of his rights, privileges and immunities secured to him by Article I of and the First and Fourteenth Amendments to the Constitution of the United States of America.

7. This action is brought against defendant in her official capacity.

II. VENUE

8. Venue is conferred upon this Court by 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Venue is also conferred upon this Court because, on information and belief, defendant resides within this judicial district.

III. FACTUAL ALLEGATIONS PERTINENT TO ALL CLAIMS

9. Plaintiff hereby incorporates the facts set forth in paragraph 1-8 above, as if fully stated herein.

10. At some time prior to November 5, 1996, defendant was presented with petitions supporting an amendment to Article VIII § fifteen (15) through twenty-two (22) of the Missouri Constitution ("Article VIII").

11. Article VIII deals with the determination of whether candidates from Missouri for the United States Congress ("Congress") support a certain proposed amendment to the United States Constitution which would place limits on the number of terms that members of Congress could serve.

12. A true and accurate copy of the text of Article VIII is attached hereto as Exhibit A and is incorporated herein by this reference.

13. On information and belief, after appropriately investigating the signatures on the petitions supporting Article VIII, defendant certified that Article VIII could be placed on the Missouri statewide ballot for the general election that was held on November 5, 1996.

14. At Cook's direction Article VIII was included on the November 5, 1996 general election ballot.

15. On November 5, 1996, more than fifty percent of the citizens of Missouri who cast votes in regard to Article VIII voted for adoption of Article VIII as an Amendment to the Missouri Constitution.

16. After November 5, 1996, defendant has taken action to implement Article VIII as an Amendment to the Constitution of the State of Missouri.

17. One of the provisions of Article VIII instructs Missouri legislators to use all of their delegated powers to pass the federal term limit amendment of § 16.

18. One of the provisions of Article VIII is that candidates who fail to sign a written oath stating, among other things, that they will vote in favor of a certain proposed amendment to the United States Constitution, specifically set forth in Article VIII, to limit the number of terms that can be served by members of Congress, will have a "designation" placed next to the candidate's name on the ballot stating either "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" (the "Term Limit Designation").

19. Defendant, in her official capacity as Secretary of State of the State of Missouri, is required by Article VIII to determine which candidates will have the Term Limit Designation placed by their name.

20. In her official capacity as Secretary of State of the State of Missouri, defendant is otherwise responsible for the implementation of Article VIII.

21. Under the provisions of Article VIII, unless candidates support all of the terms of the term limitation amendment that is contained in Article VIII, they will be designated as a candidate who has "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS".

22. In many instances, under Article VIII, defendant would be required to designate candidates who actually support term limits as

having "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS". For example, if a candidate for Congress supports the general concept of term limits but opposes a provision that would allow other states to adopt longer term limits then, under Article VIII, the candidate would still be designated as having "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS". *See* Article VIII § 16(c).

23. Due to the facts set forth in the immediately preceding paragraph, Article VIII, as enacted, would require the defendant to place designations next to candidates names that were factually inaccurate.

24. Plaintiff is more than twenty-five years of age. He is, and at all times pertinent to this litigation has been, a resident of the State of Missouri and particularly of Missouri's third congressional district. He is, and at all times pertinent to this litigation has been, a taxpayer and registered voter in the State of Missouri.

25. Plaintiff is, and for a period of more than seven years has been, a citizen of the United States of America.

26. Plaintiff is eligible to be a candidate for the position of congressional representative for the United States Congress for the third congressional district of Missouri.

27. In 1976, plaintiff was a candidate for the position of congressional representative for the United States Congress for the third congressional district of Missouri and is currently considering once again seeking election to the United States Congress. Plaintiff may not formally file his candidacy until early 1998 pursuant to Mo. Rev. Stat § 115.349. No federal statutes require plaintiff to register his candidacy at this time; plaintiff meets all presently applicable requirements to be a candidate for Congress.

28. Plaintiff generally is inclined to be against limitations on terms of members of Congress, but, because of the vagueness of Article VIII, he is unable to determine whether he would be willing to take action fully consistent with the provisions of the "Term Limits Pledge" discussed in Section 18 of Article VIII.

29. Plaintiff opposes any provision of state law that would require candidates for elected office to sign any pledge or face having a designation placed by their name for failing to do so.

30. If the Term Limit Designation is placed by plaintiff's name on any ballot it will damage his chances of being elected to Congress. Because of the damage that the Term Limit Designation would do to plaintiff's candidacy and because he cannot reasonably ascertain whether the Term Limit Designation would be applied to him, plaintiff has not moved forward with initial exploration of his election campaign for Congress.

31. The various obligations placed on members of Congress by Sections 17 and 18 of Article VIII are unduly vague and their meaning is not readily ascertainable.

32. Plaintiff believes that the obligations placed on members of Congress by Sections 17 and 18 of Article VIII would unduly limit his ability to exercise his best judgment and to represent his constituents in regard to issues, including, but not limited to, term limitations, if he were elected as a member of Congress. Because of these concerns, if Article VIII remains in place, plaintiff will not run for Congress even if all other factors appear to him to favor his election.

COUNT I

IMPERMISSIBLE ADDITION TO THE QUALIFICATIONS OF CANDIDATES

33. Plaintiff hereby incorporates the facts set forth in paragraph 1-32 above, as if fully stated herein.

34. Article I of the United States Constitution (the "Constitution") establishes the qualifications for candidacy for election to Congress.

35. Article VIII effectively adds to the qualifications imposed under Article I of the Constitution the requirement that all candidates take a position on the issue of term limits or be branded with a negative "designation" for not doing so.

36. Plaintiff has been damaged and will continue to be damaged by Article VIII because the additional qualifications for election to Congress make it less likely that Mr. Gralike will be elected to Congress.

WHEREFORE plaintiff prays that the Court grant declaratory judgment against defendant:

(a) declaring the Article VIII as unconstitutional as violative of Article I of the United States Constitution;

(b) awarding permanent injunctive relief staying defendant from implementing, in any way, Article VIII;

(c) awarding plaintiff his attorneys fees, costs and expenses for bringing this action; and

(d) awarding such other and further relief as may be just and proper.

COUNT II

ARTICLE VIII IS UNCONSTITUTIONALLY VAGUE

37. Plaintiff hereby incorporates the facts set forth in paragraph 1-36 above, as if fully stated herein.

38. Article VIII Section 17 sets out a series of affirmative tasks required for members of Congress from Missouri if they are to avoid the Term Limit Designation.

39. Section 18 of Article VIII establishes a "Term Limits Pledge" to be provided to all candidates for Congress from Missouri (the "Pledge"). That pledges reads as follows:

> I support term limits and pledge to use all my legislative powers to enact the proposed Constitutional Amendment set forth in the Term Limits Act of 1996. If elected, I pledge to vote in such a way that the designation "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" will not appear adjacent to my name.

40. The Pledge can not be understood by an average person for numerous reasons, including, but not limited to, the following: the

term "term limits" is vague and ambiguous; Article VIII's description of what actions must be taken by a legislator to prevent the designation "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" (the "Demanded Acts") is vague and ambiguous.

41. Among the Demanded Acts is the requirement that representatives in Congress vote for the specific term limits amendment that is proposed in Article VIII, whenever it is brought to a vote. This requirement, however, does not make clear what the representatives are to do if the proposed term limits amendment has itself been amended. For example, if the term limits amendment is amended to include a provision that would delay implementation of the term limits amendment until the year 2010, Article VIII does not make clear whether the representative is required to vote for or against the amendment in that form. Similarly, if subsection (c) of the term limits amendment were deleted, Article VIII is unclear as to whether the representative is required to vote in favor of or against the altered amendment.

42. All of the Demanded Acts of Section 17 are similarly vague and ambiguous.

43. Section 19(2) of Article VIII provides that in determining whether to place the Term Limit Designation by a candidate's name, defendant is "to consider timely submitted public comments."

44. Article VIII does not describe how public comments are to be considered by defendant, nor what weight they are to be given, in determining whether the Term Limit Designation is to be place by a candidate's name. For example, if a candidate has signed the Term Limits Pledge, but defendant receives numerous public comments that the candidate is against term limits, Article VIII does not provide whether the Term Limits Designation is to be placed by the candidate's name.

45. Section 19(5) of Article VIII provides a process for appealing determinations not to place the Term Limits Designation by a given candidate's name, but does not set forth the standard upon which the determination is to be reviewed.

46. Because Article VIII is vague and ambiguous plaintiff cannot determine whether he, in good faith, could take the Term Limits Pledge or, even if he did, whether the Term Limits Designation would be placed by his name on the ballot.

47. Plaintiff has been damaged by the vagueness and ambiguity of Article VIII in that, due to that ambiguity, he has not been and will not be able to determine whether he will run for election to Congress.

WHEREFORE plaintiff prays that the Court grant declaratory judgment against defendant:

(a) declaring the Article VIII unconstitutional as violative of the First and Fourteenth Amendments of the United States Constitution;

(b) awarding permanent injunctive relief staying defendant from implementing, in any way, Article VIII;

(c) awarding plaintiff his attorneys fees, costs and expenses for bringing this action; and

(d) awarding such other and further relief as may be just and proper.

COUNT III

ARTICLE VIII VIOLATES MR. GRALIKE'S RIGHT OF FREE SPEECH

48. Plaintiff hereby incorporates the facts set forth in paragraph 1-47 above, as if fully stated herein.

49. Article VIII effectively forces candidates for Congress in Missouri to take a position on terms limits and, as such constitutes forced speech.

50. Article VIII will have a chilling effect on free speech by requiring candidates for Congress from Missouri either to adopt the "Term Limits Pledge" or face the consequences of having a negative "designation" placed by their name on the ballot.

51. There is no compelling State interest to support the forced speech required by Article VIII or to support the chilling effect that Article VIII would have on political speech.

52. Plaintiff has been damaged by Article VIII because its restrictions on political speech and its forced political speech have forced him to delay preparations for a campaign for Congress. If Article VIII is allowed to remain in effect, plaintiff will continue to be damaged because Article VIII will have a chilling effect on his political speech and will effectively force him to speak on the term limits issue.

WHEREFORE plaintiff prays that the Court grant judgment against defendant:

(a) declaring the Article VIII unconstitutional as violative of the First and Fourteenth Amendments of the United States Constitution;

(b) awarding permanent injunctive relief staying defendant from implementing, in any way, Article VIII;

(c) awarding plaintiff his attorneys fees, costs and expenses for bringing this action; and

(d) awarding such other and further relief as may be just and proper.

COUNT IV

THE JURISDICTIONAL LIMITS OF ARTICLE VIII VIOLATE THE SUPREMACY CLAUSE

53. Plaintiff hereby incorporates the facts set forth in paragraph 1-52 above, as if fully stated herein.

54. Under the Federal Rules of Civil Procedure and 42 U.S.C. § 1983, the United States District Court for the Western District of Missouri has jurisdiction to decide this matter.

55. Section 21 of Article VIII states: "Any legal challenge to this Amendment shall be filed as an original action before the Supreme Court of this State." (the "Jurisdictional Limitation").

56. The Jurisdictional Limitation purports to deprive this Court of jurisdiction to hear this case. Accordingly, the Jurisdictional Limitation is in violation of the Supremacy Clause of Article VI of the United States Constitution.

57. Plaintiff would be damaged if he were required to bring this matter as an original action in the Supreme Court of Missouri because it would deprive him of his right under federal law to bring this case in federal court.

COUNT V

ARTICLE VIII VIOLATES ARTICLE V OF THE UNITED STATES CONSTITUTION

58. Plaintiff hereby incorporates the facts set forth in paragraph 1-57 above, as if fully stated herein.

59. Article VIII acts as a binding command to the Missouri legislature through its language that the members of Congress are "instruct[ed]. . .to use all of [their] delegated powers to pass the Congressional Term Limits Amendment set forth above." Mo. Const. Art. VIII § 17.

60. Article VIII effectively forecloses legislators' independent deliberations and decisions by vesting power to enact legislation in the hands of the people of the state of Missouri through ordering the legislators to vote in a certain manner.

61. This instruction unconstitutionally expands the authority of the people of Missouri to participate in the amendment process to the federal constitution.

62. By Article V, federal amendment functions are specifically delegated to the state and federal legislatures, not the people of the states. The deliberative process prescribed by Article V may not be so abridged through fixed state constitutional "instructions" to pass an amendment as proposed by Article VIII. If this were allowed, the people would indirectly be doing what they may not directly do under the law—amend the United States Constitution.

WHEREFORE plaintiff prays that the Court will grant judgment against defendant:

(a) declaring Article VIII unconstitutional as violative of Article V of the United States Constitution;

(b) awarding permanent injunctive relief staying defendant from implementing, in any way, Article VIII;

(c) awarding plaintiff his attorneys fees, costs and expenses for bringing this action; and

(d) awarding such other further relief as may be just and proper.

COUNT VI

ARTICLE VIII IS BEYOND THE POWER OF INITIATIVE GRANTED TO THE PEOPLE BY THE MISSOURI CONSTITUTION, ARTICLE III §§ 49-50.

63. Plaintiff hereby incorporates the facts set forth in paragraph 1-62 above, as if fully stated herein.

64. Article XII of the Missouri Constitution provides that voters may amend the Missouri constitution without the General Assembly by passing initiative-proposed amendments.

65. While Article VIII has the form and label of a constitutional amendment, the subject matter reveals its true nature as being a directive to the legislature to take a specific action, which is not a power reserved for the people by initiative.

WHEREFORE plaintiff prays that the Court will grant judgment against defendant:

(a) declaring Article VIII unconstitutional as beyond the power of the people by Articles III and XII of the Missouri Constitution;

(b) awarding permanent injunctive relief staying defendant from implementing, in any way, Article VIII;

(c) awarding plaintiff his attorneys fees, costs and expenses for bringing this action; and

(d) awarding such other further relief as may be just and proper.

Respectfully submitted,

BENSON & ASSOCIATES

By: /s/ [Jane McQueeny]
Arthur Benson, #21107
Gregg Lombardi, #36139
Jane McQueeny, #34425
Kathy Finnell, #42332

ATTORNEYS FOR PLAINTIFF

Date: July 15, 1997

[Address and Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

[Caption Omitted]

FIRST AMENDED ANSWER

Defendant Rebecca McDowell Cook, through counsel, answers plaintiff's First Amended Complaint as follows:

JURISDICTION

1. Based on the information and belief of defendant, defendant admits the allegations contained in ¶ 1 of plaintiff's First Amended Complaint.

2. Defendant admits that she is the Missouri Secretary of State. Defendant also admits that she is a natural person whose government office is in Jefferson City, Missouri.

3. Plaintiff's allegation in ¶ 3 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant is without sufficient information to admit or deny the allegations contained in ¶ 3 and, therefore, denies the same.

4. Defendant admits that jurisdiction would be proper under 28 U.S.C. § § 1331, and 1343(a)(3), but denies that plaintiff has pled a cause of action sufficient to invoke this Court's jurisdiction.

5. Defendant admits the allegations contained in ¶ 5 of plaintiff's First Amended Complaint and asserts that she shall continue to act under color and pretense of state law in support of her duties as Secretary of State.

6. Defendant denies the allegations contained in ¶ 6 of plaintiff's First Amended Complaint.

7. Defendant denies the allegations contained in ¶ 7 of plaintiff's First Amended Complaint. Defendant is entitled to

qualified immunity for any claim for monetary damages against her in her official capacity.

VENUE

8. Defendant admits venue would be proper if plaintiff stated a claim, but denies plaintiff has stated a claim sufficient to invoke venue in the Court's jurisdiction.

FACTUAL ALLEGATIONS PERTINENT TO ALL CLAIMS

9. Defendant reasserts her responses to ¶'s 1-8 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

10. Defendant admits the allegations contained in ¶ 10 of plaintiff's First Amended Complaint.

11. Plaintiff's allegation in ¶ 11 is a summary of the provisions of Article VIII and does not require defendant to respond; however, to the extent defendant should respond, defendant asserts Article VIII speaks for itself.

12. Defendant denies the allegations in ¶ 12 of plaintiff's First Amended Complaint as no Exhibit A was attached to plaintiff's First Amended Complaint. Assuming, arguendo, that Exhibit A is intended to be the same as Exhibit A in plaintiff's original Complaint, defendant denies any allegations as Exhibit A does not fully represent Article VIII.

13. Defendant denies the allegations contained in ¶ 13 of plaintiff's First Amended Complaint. Defendant certified the issue for the ballot pursuant to a court order after initially determining that the provision lacked sufficient signatures.

14. Defendant admits that a portion of Article VIII was included on the November 5, 1996, general election ballot pursuant to a court order, and denies the remaining allegations of ¶ 14 of plaintiff's First Amended Complaint.

15. Defendant admits the voters adopted sections 15-22 of Article VIII as an amendment to the Missouri Constitution, not

Article VIII in its entirety as suggested in plaintiff's First Amended Complaint.

16. Defendant admits the allegations contained in ¶ 16 of plaintiff's First Amended Complaint.

17. Plaintiff's allegation in ¶ 17 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant denies the allegations contained in ¶ 17 of plaintiff's First Amended Complaint and asserts that Article VIII speaks for itself.

18. Plaintiff's allegation in ¶ 18 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant denies the allegations contained in ¶ 18 of plaintiff's First Amended Complaint and asserts that Article VIII speaks for itself.

19. Plaintiff's allegation in ¶ 19 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant denies the allegations contained in ¶ 19 of plaintiff's First Amended Complaint and asserts that Article VIII speaks for itself.

20. Plaintiff's allegation in ¶ 20 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant denies the allegations contained in ¶ 20 of plaintiff's First Amended Complaint and asserts that Article VIII speaks for itself.

21. Plaintiff's allegation in ¶ 21 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant denies the allegations contained in ¶ 21 of plaintiff's First Amended Complaint and asserts that Article VIII speaks for itself.

22. Defendant admits Article VIII puts the Secretary of State in the position of designating candidates in some instances as having "DECLINED TO PLEDGE SUPPORT OF TERM LIMITS," but is without sufficient information to admit or deny the remaining allegations in ¶ 22 of plaintiff's First Amended Complaint and, therefore, denies the same.

23. Defendant is without sufficient information to admit or deny the allegations in ¶ 23; therefore, defendant denies the same.

24. Based on information and belief, defendant admits the allegations contained in ¶ 24.

25. Based on information and belief, defendant admits the allegations contained in ¶ 25.

26. Based on information and belief, defendant admits the allegations contained in ¶ 26.

27. Defendant admits plaintiff was a candidate for Congress in 1976; Defendant asserts that Section 115.349, RSMo, speaks for itself; Defendant lacks sufficient information to admit or deny the remaining allegations contained in ¶ 27 and, therefore, denies the same.

28. Defendant admits that plaintiff is generally inclined to be against term limits, but is without sufficient information to admit or deny the remaining allegations contained in ¶ 28 and, therefore, denies the same.

29. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 29 and, therefore, denies the same.

30. Defendant denies the term limit designation will damage plaintiff's candidacy, but is without sufficient information to admit or deny the remaining allegations contained in ¶ 30 and, therefore, denies the same.

31. Defendant denies sections 17 and 18 of Article VIII are unconstitutionally vague and is without sufficient information to admit or deny the remaining allegations in ¶ 31 and, therefore, denies the same.

32. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 32 and, therefore, denies the same.

COUNT I

33. Defendant reasserts her responses to ¶'s 1-32 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

34. Defendant admits the allegations contained in ¶ 34 of plaintiff's First Amended Complaint.

35. Defendant denies the allegations contained in ¶ 35 of plaintiff's First Amended Complaint.

36. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 36 and, therefore, denies the same.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count I of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

COUNT II

37. Defendant reasserts her responses to ¶'s 1-36 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

38. Defendant admits Section 17 establishes "Voter Instruction on Term Limits for Members of Congress," but is without sufficient information to respond to the remaining allegations contained in ¶ 38 of plaintiff's First Amended Complaint and, therefore, denies the same.

39. Plaintiff's allegation in ¶ 39 is a legal statement and does not require defendant to respond; however, to the extent defendant should respond, defendant asserts Section 18 of Article VIII speaks for itself.

40. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 40 and, therefore, denies the same.

41. Defendant admits Article VIII sets forth "Voter Instructions on Term Limits for Members of Congress," but is without sufficient information to respond to the remaining allegations contained in ¶ 41

of plaintiff's First Amended Complaint and, therefore, denies the same.

42. Defendant denies the allegations contained in ¶ 42 of plaintiff's First Amended Complaint.

43. Defendant admits the allegations contained in ¶ 43 of plaintiff's First Amended Complaint.

44. Plaintiff's allegation in ¶ 44 does not state an allegation of fact and does not require defendant to respond; however, to the extent defendant should respond, defendant is without sufficient information to admit or deny the allegations contained in ¶ 44 and, therefore, denies the same.

45. Defendant denies the allegations contained in ¶ 45 of plaintiff's First Amended Complaint.

46. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 46 and, therefore, denies the same.

47. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 47 and, therefore, denies the same.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count II of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

COUNT III

48. Defendant reasserts her responses to ¶'s 1-47 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

49. Defendant denies the allegations contained in ¶ 48 of plaintiff's First Amended Complaint.

50. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 50 and, therefore, denies the same.

51. Defendant denies the allegations contained in ¶ 51 of plaintiff's First Amended Complaint.

52. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 52 and, therefore, denies the same.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count III of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

COUNT IV

53. Defendant reasserts her responses to ¶'s 1-52 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

54. Defendant admits that jurisdiction would be proper, but denies that plaintiff has pled a cause of action sufficient to invoke this Court's jurisdiction.

55. Plaintiff's allegation in ¶ 55 quotes Section 21 of Article VIII, and does not require defendant to respond; however, defendant admits that to the extent plaintiff quotes Article VIII, Section 21, he has done so accurately.

56. Defendant denies the allegations contained in ¶ 56 of plaintiff's First Amended Complaint.

57. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 57 and, therefore, denies the same.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count IV of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

COUNT V

58. Defendant reasserts her responses to ¶'s 1-57 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

59. Defendant denies the allegations contained in ¶ 59 of plaintiff's First Amended Complaint.

60. Defendant denies the allegations contained in ¶ 60 of plaintiff's First Amended Complaint.

61. Defendant denies the allegations contained in ¶ 61 of plaintiff's First Amended Complaint.

62. Defendant is without sufficient information to admit or deny the allegations contained in ¶ 62 and, therefore, denies the same.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count V of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

COUNT VI

63. Defendant reasserts her responses to ¶'s 1-62 of plaintiff's First Amended Complaint and incorporates them by reference as if fully set forth herein.

64. Defendant admits Article XII of the Missouri Constitution provides for amendment to the Missouri Constitution pursuant to Article XII, Section 2(b) and Article III, Sections 49-50 as alleged in ¶ 64 of plaintiff's First Amended Complaint.

65. Defendant denies the allegations contained in ¶ 65 of plaintiff's First Amended Complaint.

66. Defendant denies any and all allegations contained in Plaintiff's First Amended Complaint which are not expressly admitted herein.

WHEREFORE, Defendant Rebecca McDowell Cook, prays that Count VI of plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said defendant, that costs be assessed against plaintiff, and for such other and further relief as this Court deems just and proper.

AFFIRMATIVE DEFENSES

In further support of its Answer, the Defendant affirmatively states:

67. Plaintiff has failed to state a claim upon which relief can be granted as required by Federal Rule of Civil Procedure 12(b)(6).

68. Pursuant to Article III, Section 2 of the Constitution of the United States, plaintiff's allegations are not ripe.

69. Pursuant to Article III, Section 2 of the Constitution of the United States, the plaintiff lacks standing to bring this lawsuit.

70. Pursuant to Article I, Section 4, Clause 1 of the Constitution of the United States, individual states regulate the time, place and manner of Congressional elections.

71. Pursuant to the Tenth Amendment of the Constitution of the United States, individual states reserve the right to regulate the language printed on ballots.

72. Defendant is entitled to Eleventh Amendment immunity on the Plaintiffs' claims. Therefore this court lacks subject-matter jurisdiction.

73. Defendant is protected from liability by the doctrine of qualified immunity.

74. Plaintiff's attempt to secure a determination that Article VIII, Sections 15 - 22 of the Missouri Constitution violates the Constitution of the United States before the Supreme Court of Missouri has had an opportunity to construe its constitution and perhaps avoid a federal constitutional issue is an affront to Missouri's retained sovereignty unauthorized by any provision of the federal constitution, and, as such, this court lacks jurisdiction over the subject matter of this action.

75. In further defense, Defendant specifically incorporates by reference each and every other additional affirmative defenses that may be uncovered or made known during the investigation and discovery in this case. Defendant specifically reserves the right to amend her answer to include affirmative defenses at the time they are discovered.

WHEREFORE, defendant, Rebecca McDowell Cook, respectfully requests plaintiff's First Amended Complaint be dismissed with prejudice, that judgment be entered in favor of said

defendant, that costs be assessed against plaintiff, and for such other relief as this Court deems just and proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

JOHN R. MUNICH
Deputy Attorney General For Litigation
/s/ [Tina M. Crow Halcomb]
TINA M. CROW HALCOMB
Missouri Bar No. 47128
Assistant Attorney General
/s/ [Mike Zito]
MIKE ZITO
Missouri Bar No. 47248
Assistant Attorney General

[Address and Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

[Caption Omitted]

DECLARATION OF DONALD GRALIKE

I, Donald James Gralike, declare under penalty of perjury that the following is true and correct:

1. My name is Donald J. Gralike and I am the plaintiff in the case captioned *Donald James Gralike v. Rebecca McDowell Cook;* Case No. 96-4417-CV-C-9.

2. It is my present intention to run for the United States Congress in the Third District of Missouri in the year 1998.

3. Further, it is my present intention to comply with all Missouri Statutes for declaring my candidacy for the U.S. Congress during the time periods set forth in the statutes.

4. It is my understanding that §115.349 RSMo., 1994, sets out the time for filing a declaration of candidacy:

> A. Except as otherwise provided in sections 115.361 to 115.383, no candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the *last Tuesday in March immediately preceding the primary election.*
>
> B. No declaration of candidacy for nomination in a primary election shall be accepted for filing prior to *8:00 a.m. on the last Tuesday in February immediately preceding the primary election.* (emphasis added)

5. It is my understanding that the earliest time I can officially file for purposes of placing my name on the ballot as a candidate for

U.S. Congress is the last Tuesday in February, which will be February 24, 1998.

6. I intend to file my declaration of candidacy for U.S. Congress in accordance with §115.353 and §115.355 RSMo., 1994. In addition, I will pay the $100 filing fee as required by §115.357 RSMo., 1994, during the period of time provided for such payments.

7. It is my understanding that there are no other formal or official steps I may take to declare my candidacy until I file my declaration of candidacy in person with that office during the period of time provided by lay in §115.353 and §115.355 RSMo., 1994. If other steps or actions required by law are brought to my attention, I will immediately comply with all such requirements.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ [Donald James Gralike
Donald James Gralike

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

[Caption Omitted]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW plaintiff Donald James Gralike ("Gralike") and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves for summary judgment in this matter.

In support of this motion, Gralike states that there is no dispute as to any material fact in this matter. Under the undisputed facts of this case, Gralike is entitled to judgment as a matter of law because Sections 15-22 of Article VIII of the Missouri Constitution (the "Amendment") are unconstitutional because: (1) the Amendment violates the Qualifications Clause contained in Article I of the Constitution by handicapping a group of potential candidates for federal office; (2) the Amendment is unconstitutionally vague; (3) the Amendment improperly infringes on candidates' First amendment rights of free speech; (4) the Amendment violates Article V of the Constitution by attempting to influence the federal constitutional amendment process; and, (5) the Amendment's jurisdictional provisions violate the Supremacy Clause of the Constitution.

Gralike has filed Suggestions in support of this Motion, which are incorporated herein by this reference. Gralike also files the following documents in support of his Motion: pertinent portions of the transcript of the deposition of defendant Rebecca Cook (attached hereto as Exhibit 1); the Initiative Petition for the Amendment (Exhibit 2); ballot language for the Amendment (Exhibit 3); and pertinent portions of the transcript of the deposition of Deborah Cheshire (pp. 19-21) (Exhibit 4).

For the foregoing reasons, plaintiff Gralike respectfully submits that the Court should enter judgment in his favor in his matter.

Respectfully submitted.

ARTHUR A. BENSON &
ASSOCIATES

/s/ [Gregg Lombardi]

ARTHUR BENSON	#21107
JANE McQUEENY	#34425
GREGG LOMBARDI	#36139

ATTORNEYS FOR PLAINTIFF

[Address and Certificate of Service Omitted]

STATE OF MISSOURI
COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

September 22, 1996

The Honorable Rebecca M. Cook
Secretary of State
State of Missouri
Jefferson City, MO 65101

Dear Ms. Cook:

The Committee on Legislative Research has adopted a fiscal note summary for an amendment to the Constitution of Missouri as proposed by initiative petition known as Constitutional Amendment Number 9 that has been deemed sufficient for ballot status by Circuit Judge Thomas J. Brown and it reads as follows:

The taxpayers of Missouri will have costs of over $40,000 per year to track records of candidates and county election authorities will have increased costs for printing ballots. Does not include costs of possible litigation.

A copy of the fiscal note for the proposed amendment is enclosed. If you have any questions regarding this matter, please feel free to contact me.

For the Committee,
/s/ [Jeanne Jarrett]
Jeanne Jarrett, CPA
Director, Oversight Division

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R.NO. 5003-01
BILL NO. Constitutional Amendment 9
SUBJECT: Constitutional Amendments: Term Limits
TYPE: #Corrected
DATE: September 22, 1996

#To change references to General Assembly to references to Congress

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 1997	FY 1998	FY 1999
General Revenue	($67,600)	($29,092)	($41,273)
Total Estimated Net Effect on All State Funds	($67,600)	($29,092)	($41,273)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 1997	FY 1998	FY 1999
NONE			
Total Estimated Net Effect on All Federal Funds	$0	$0	$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 1997	FY 1998	FY 1999
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: ( ) indicate costs or losses
This fiscal note contains 3 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Secretary of State (SOS)** would request 1.25 FTE. One Paralegal and an attorney for one-quarter time. The Paralegal would monitor, catalogue and store the #Congressional Record; attend sessions and committee hearings of the Congress; record, review, store and check the validity of public comments; record and store prospective candidates' pledges; advise the Elections Division and counsel of findings with regard to actions and recorded statements of Congressional candidates; and testify during subsequent litigation. The attorney would be directly responsible for handling anticipated litigation. **Oversight** assumes legal help would be acquired on an as needed basis and has classified these costs as expenses.

Advertisement costs for the proposal would be $1,300 per column inch for the text of the proposal, the introduction, title, fiscal note summary, and affidavit. The proposal would be on the ballot for the November 1996 general election.

The Boone and Buchanan County Clerks noted that the effect of the proposal on election costs would depend upon how many affected candidates are on a ballot. Additional costs to election authorities could range from zero to well over $100,000 for a given election in a given county.

FISCAL IMPACT - State Government	FY 1997	FY 1998 (7 MO)	FY 1999
GENERAL REVENUE FUND			
Cost to Secretary of State			
Personal Service (1 FTE)	$0	$11,594	$21,012
Fringe Benefits	0	3,675	6,459
Expense and Equipment	0	5,730	0
Travel to Washington D.C.	0	1,866	3,296
Subscription to Congressional Record	0	250	0
Attorneys	0	5,977	10,506
Newspaper Advertisements	67,600	0	0
Administrative Costs for Secretary of State	(67,600)	($29,092)	($41,273)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**(67,600)**	**($29,092)**	**($41,273)**

FISCAL IMPACT - Local Government	FY 1997	FY 1998	FY 1999

Cost to County Clerks

The additional matter required to be printed on each ballot could cause a small increase in cost for printing ballots.

FISCAL IMPACT- Small Business

No direct fiscal impact would be expected on small businesses as a result of this proposal.

DESCRIPTION

This proposal would require summaries of the positions, records or intentions of candidates for the United States Congress on the issue of term limits adjacent to candidates' names on election ballots.

This legislation is not federally mandated, would not duplicate any other program, and would not immediately require additional capital improvements or rental space.

SOURCES OF INFORMATION

Secretary of State
Boone County Clerk
Buchanan County Clerk

Jeanne Jarrett, CPA
Director
September 22, 1996

OFFICE OF THE SECRETARY OF STATE

MEMORANDUM

TO: The Honorable Gary Burton
Representative, District 128

The Honorable Ralph Monaco
Representative, District 49

FROM: June Striegel Doughty
General Counsel

DATE: March 14, 1997

RE: Term Limits Legislation

We very much appreciate your willingness to sponsor legislation that will assist our office in implementing the provisions of Article VIII of the Missouri Constitution which Missouri voters adopted last November. As you know the Missouri Constitution now requires the Secretary of State to accurately determine: (1) whether non-incumbent Missouri candidates for congressional office have taken or declined to take the Congressional Term Limits Amendment Pledge that is set forth in the Missouri Constitution; and (2) whether incumbent candidates for congressional office have fulfilled the voter instruction set forth in the Missouri Constitution or should have "the Scarlet Letter" placed adjacent to their name on the primary and general election ballots.

This memorandum is intended to provide you with a written explanation of why we believe the proposed legislation is necessary and to provide you with copies of other information that may be relevant to you or others at the upcoming hearing.

I have also made contact with the offices of each of our congressional delegates and have forwarded to them a copy of the statutory provision we have proposed to you and the General Assembly for adoption in Missouri. Although Senator Bond's office indicated they would be making a written response, nothing has been received in this office from any of our congressional delegates.

While the Constitutional provisions are quite specific in many respects, there are a number of unanswered questions that will need to be addressed at some point between now and election day in some forum, possibly the courts.

The HCS HB 681 addresses and clarifies four basic matters which, if left unaddressed could lead to unnecessary confusion and litigation and could further delay finality of the ballots and increase costs to the taxpayers of this state.

The four objectives of the bill are:

1. To set a precise deadline when non-incumbent candidates for U.S. Senator and Representative must make their decision regarding whether or not to take the pledge and to provide that if they do not make an affirmative decision on this question they will be deemed to have declined. The deadline proposed is the close of candidate filing or, if a candidate is filing for office for some reason after the close of candidate filing at the time they file their declaration of candidacy.

2. To establish when the SOS will make determinations regarding whether incumbent candidates will receive the Scarlet Letter. The Constitution requires the SOS to make determinations regarding non-incumbent candidates not later than 5 business days after the deadline for filing for the office. The proposed bill makes the deadline for incumbents the same, that is 5 business days after the deadline for filing for the office.

3. The Constitution requires the SOS to consider "timely" submitted public comments and information submitted by the candidates. The proposed legislation requires the comments and information to be in writing and defines "timely" as comments and information received by the SOS prior to the deadline for filing for the office.

4. The final objective of the proposed legislation is to allow the SOS to take a common sense approach in making her determinations and to not certify the Scarlet Letter next to the names of incumbent candidates who have complied in all material respects with the voter instruction contained in the Constitution.

There are many possible issues still to be addressed. The U.S. Supreme Court recently let stand an Arkansas Supreme Court ruling which invalidated a similar law in that state. In addition, the Oklahoma Supreme Court has also invalidated a similar initiative. Copies of these cases are attached for your review. Also attached is a copy of the case that has been filed in federal court in Missouri challenging the constitutional term limits provisions in federal court. Finally, recent news articles dealing with this issue are also attached for your review, including one article from Rapid City, South Dakota describing a unique approach to the issue in that state.

We are hopeful that the General Assembly will assist us through legislation in keeping the confusion and costs associated with our Constitutional duties at a minimum. Thank you for your support in this effort.

Attachments

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

[Caption Omitted]

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[4]

DIRECT EXAMINATION

BY: MS. McQUEENY:

Q. Would you please state your name for the record.

A. Debbie Cheshire.

Q. And, Ms. Cheshire, I introduced myself to you off the record. My name is Jane McQueeny. I'm here today on behalf of the plaintiff, whose name is Donald Gralike, and he has sued the Secretary of State over Article VIII. Do you understand that, ma'am? Do you understand all of that? That I'm here on behalf of the --

A. Right.

Q. --plaintiff and that Mr. Gralike has sued the Secretary of State over Article VIII.

A. That's correct.

Q. I'm here today to ask you some questions about your role in the Secretary of State's office and any factual knowledge you have that we may think [5] is helpful to the lawsuit. Do you understand that?

A. I understand.

Q. Have you ever had your deposition taken before?

A. No. Never.

Q. Just a couple of real quick ground rules. One of the reasons lawyers take depositions so that if we go to trial on this matter, which is currently scheduled for March, and you testify differently than you

do today, then we can use your testimony from today to impeach you.

Additionally, it's our way of talking to you and gathering knowledge of your factual knowledge about the case. Do you understand that?

A. Yes.

Q. And you understand you're under oath?

A. Yes.

Q. And I'm going to ask you questions and I would really appreciate it, Miss Cheshire, if you don't understand one of my questions, you let me know. Okay?

A. Okay.

Q. And I'm going to assume if you do answer my questions, that you have understood them. Is [6] that a fair assumption on my part?

A. Yes.

Q. And you have to give audible responses.

A. Okay.

Q. Additionally, Ms. Halcomb is here as your attorney and if you need to take a break, just please let her know or let me know and we'll be happy to do that. I don't anticipate we'll be here too much longer.

A. Yes.

Q. Please tell me if you will, ma'am, what position you have with the Secretary of State's office.

A. I'm director of Elections.

Q. And how long have you been director of Elections?

A. Since August of '95.

Q. What did you do prior to becoming director of Elections in August of 1995?

A. I worked for the Missouri Senate.

Q. What did you do for the Missouri Senate?

A. I was in the enrolling room which was --

Q. I'll tell you, I have no idea what the enrolling room is.

A. Well, it was proofing Senate bills, making the amendments that were approved on the floor and [7] then proofing and getting ready for print.

Q. And who was your actual employer? The State of Missouri?

A. Yes.

Q. Were you involved in drafting any legislation?

A. No.

Q. And how long did you work in the enrolling room?

A. Two years.

Q. And prior --

A. Well, let me think. Yes, two years.

Q. Prior to that what did you do?

A. I worked for the City of Jefferson City.

Q. And what did you do?

A. I was city clerk.

Q. And how long were you city clerk?

A. I think it was around two years.

Q. Do you have a college degree?

A. Yes.

Q. And where did you go to college?

A. William Woods.

Q. What's your degree in?

A. Business management.

Q. As Elections director for the Secretary of State, what have your responsibilities, if any, been as it relates to Article VIII?

[8]

A. When the petition was filed with our office I took control of the actual petition as far as keeping control of the file, the paperwork.

Q. Which looked like was quite a bit.

A. Which was considerable. Oversaw the copying of them and sending them out to the county clerks. And then made sure the responses from county clerks came back as far as certification, as far as the number of signatures that were valid and invalid.

Q. Have you had any other responsibilities as it relates to Article VIII?

A. No. From the time that it was put on the ballot, I mean, I had some responsibility as far as sending out to county clerks what was to be placed on the ballot and then after that, nothing.

Q. What about today? Are you doing anything as it relates to Article VIII as the director of Elections --

A. No.

Q. -- Elections director? Let me -- is that different than the director of Elections? Is that a different title than being Elections director or is that the same title, same person?

* * *

[17]

MS. McQUEENY: And that goes to the file or the documents that were identified as Debbie Cheshire's file.

MS. CROW HALCOMB: Probably should have been more appropriately labeled an Election Division file instead of her personal file and I apologize. I did that for my simplicity, described it as her file. It may not have been her personal file. It was very likely an Election Division file.

MS. McQUEENY: There may be other documents --

MS. CROW HALCOMB: That they may have.

MS. McQUEENY: -- is that right, of that file that we may want to use in the --

MS. CROW HALCOMB: Right. She may have never seen them and they may have been used for other purposes, obviously.

MS. McQUEENY: That was pretty clear today.

MR. LOMBARDI: Exhibit No. 14, we are stipulating that this was the press release that was sent out giving candidates information as to how to file for elected office?

MS. STRIEGEL DOUGHTY: Not exactly. **[18]** That's not what the way I would characterize it.

MR. LOMBARDI: Then you characterize it.

MS. STRIEGEL DOUGHTY: What you have is what I would characterize as an information packet. It includes in there a press release. It also includes information that is distributed to anybody who was inquiring ahead of time and may have even been sent over to all of the incumbent members of the State Legislature on the House side because all of them had to file and we knew most of them were going to. We wanted anybody we could get, frankly, to read that to know we did everything we could to get it out. It includes a press release. It includes, you know, basic information and that is the type of thing we would normally do before candidate filing begins.

MR. LOMBARDI: When Ms. Cook was testifying this morning about guidelines or other information to be -- that was provided to candidates, this Exhibit No. 14 is what she was talking about?

MS. STRIEGEL DOUGHTY: That would be the type of information that she would expect **[19]** her staff to develop. That's correct.

MS. CROW HALCOMB: For the record, I want to say that that satisfied your request for release of information provided two years ago that you asked me to provide.

MR. LOMBARDI: That's exactly right.

MS. CROW HALCOMB: We have also provided you with information -- or clarified that you do have copies of the information sent to the Congressmen in 1997 --

MR. LOMBARDI: Right.

MS. CROW HALCOMB: -- the February 24th memo from June Doughty. You have also requested sample petition pages, which we have next to stipulate to.

MR. LOMBARDI: Right. And that is Exhibit No. 15 and we're stipulating that Exhibit No. 15 is a true and accurate copy of the initiative petition signed by Missouri residents or people who purport to be Missouri residents.

MS. CROW HALCOMB: A sample signature page. That is correct.

MR. LOMBARDI: In regard to Article **[20]** VIII.

MS. CROW HALCOMB: Right. The only thing that you have requested that I have not provided you today is a certified copy of the ballot language. Is that your understanding as well?

MR. LOMBARDI: We were going to make sure that the fax from Roy Blunt was the actual one that was received and that there was --there were no pages missing.

MS. STRIEGEL DOUGHTY: It was just backwards. You can look at it 1 through 7, it's just that it wasn't in the same order that I recalled it. But it's just been reordered in really probably a more logical sense I suppose. All the pages are there.

MR. LOMBARDI: Exhibit No. 6 we're stipulating is the fax received by Ms. Cook's office --

MS. STRIEGEL DOUGHTY: Correct.

MR. LOMBARDI: -- from Roy Blunt's office --

MS. STRIEGEL DOUGHTY: Correct.

MR. LOMBARDI: -- kept in the regular course of business?

[21]

MS. STRIEGEL DOUGHTY: Correct.

MS. CROW HALCOMB: The only outstanding thing you are waiting to receive is my certified copy of the ballot language.

MR. LOMBARDI: Right.

MS. CROW HALCOMB: Certified copy of the ballot language.

MS. McQUEENY: Which I thought we had but obviously --

MS. STRIEGEL DOUGHTY: There was a fiscal note being stuck at the end. I believe what you showed me includes what the ballot language was but that was not certification of the ballot language and we would --

MR. LOMBARDI: We want to be right.

MS. McQUEENY: We'd like that.

MS. CROW HALCOMB: We'll get you that.

MS. STRIEGEL DOUGHTY: We may have it here somewhere. I may have it. Let's see what I can do to recreate this.

(Whereupon, there was a discussion held off the record.)

(WHEREUPON, EXHIBIT NO. 16 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

[22]

MR. LOMBARDI: We are stipulating that Exhibit No. 16 contains the entire ballot language in regard to the amendment to Article VIII that this case is about.

MS. CROW HALCOMB: As well as every other --

MR. LOMBARDI: And the Article VIII language is listed under Constitutional Amendment No. 9, correct?

MS. CROW HALCOMB: That's correct.

MR. LOMBARDI: That's all we need.

MS. CROW HALCOMB: That's everything that you have asked for to date.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

[Caption Omitted]

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[4]

DIRECT EXAMINATION

BY: MR. LOMBARDI:

Q. If you would please state your name for the record.

A. Rebecca McDowell Cook, also known as Becky.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. So you know how the process works?

A. Certainly.

Q. I ask you questions and you answer the questions?

A. Yes.

Q. You understand that the testimony you give here today is just as if you're testifying in a court of law?

A. I certainly do.

Q. Accordingly, it's very important that if I ask a question that you don't understand or if you feel it's vague and ambiguous in any way, that you ask me to clarify the question.

A. I will do that.

[5]

Q. You're a lawyer, is that correct --

A. Correct.

Q. -- before becoming Secretary of State of the State of Missouri? And you are Secretary of State --

A. That's correct.

Q. -- of the State of Missouri? What type of law did you practice?

A. I went through a series of different things I did but a general small town practice.

Q. Were you involved in the writing of contracts?

A. Every once in a while. I did all kinds of things.

Q. And, so, you were involved with the interpretation of contracts and drafting of those contracts from time to time?

A. Surely.

Q. Before becoming Secretary of State did you do any legal work involving statutory interpretation?

A. Not very much. Every once in a while -- once in a great while something like that would come up but generally I didn't get into that area.

Q. Before becoming Secretary of State did you ever participate in proposing or drafting legislation **[6]** or regulations?

A. I was on a committee to develop the joint custody statute for Missouri but I didn't participate in any of the drafting. I was more behind the scenes on how would this process work well.

Q. Did you give any comment on that legislation? Did you do any editing of it?

A. Oh, no.

Q. Since you've been Secretary of State have you participated in the drafting of legislation or regulations?

A. No, in all honesty, I haven't.

Q. Fair enough. Fair enough. Have you ever reviewed draft legislation or regulations that's been done by members of your staff?

A. I certainly have.

Q. And edit it from time to time?

A. I make my comments but I don't edit anything. I rely on real people to get that done right.

Q. And, if I understand correctly, you were actually appointed by the Governor to the Secretary of State position?

A. That's correct.

Q. When was that?

[7]

A. I was sworn in on December 16th, 1994.

Q. And just briefly I assume -- well, you have a legal degree. Where did you go to college?

A. I went to school at Mizzou most of the time undergrad and for law school entirely at Columbia.

Q. What was your degree in undergrad at MU?

A. Political science.

Q. When did you get that?

A. 1972.

Q. And when did you get your JD?

A. '75.

Q. Let me show you --

MR. LOMBARDI: Let's go ahead and mark that as Exhibit 1.

(WHEREUPON, EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

Q. (By Mr. Lombardi) Ms. Cook, I've placed before you what's been marked as Deposition Exhibit No. 1 for your deposition and I would represent to you that that is a copy of Article VIII of the Missouri Constitution, Sections 15 through 22. And you understand that those sections are sections relating to the term limits initiative that was passed in 1996?

[8]

A. That's my understanding.

Q. And so that we can be clear through the deposition, when I refer to Article VIII, that will be shorthand for Article VIII, Sections 15 through 22 --

A. Fair enough.

Q. -- of the Missouri Constitution. Another thing, I know that you're a busy person and a person who deals with people often but for the record to be clear here, you need to let me finish my questions before you answer them --

A. I'm sorry. Excuse me.

Q. -- even though --

A. I'm just in a hurry.

Q. I understand. And I often interrupt people myself but for the record to be clear I just need you to wait until I'm finished asking questions before you answer.

A. That's fine.

Q. Very good. Article VIII was adopted by or passed by the Missouri voters in November of 1996, correct?

A. Correct.

* * *

[13]

MS. CROW HALCOMB: Okay.

Q. (By Mr. Lombardi) Now, Ms. Cook, you ran for election in 1996, correct?

A. Yes.

Q. During the election did you take any position on Article VIII?

A. During the election I took no official position on Article VIII at all.

Q. Were you asked about Article VIII during public meetings or questioning from the press?

A. I can't recall any time that I was asked about it before its passage. It may have happened but I can't independently recall anything at this point in time.

Q. During the election did you take any position on federal congressional term limits?

A. No, I did not.

Q. Did you take any position on state term limits?

A. No, I did not.

Q. Do you have a position on federal congressional term limits?

A. I have not taken any position ever publicly.

Q. Well, I mean, what's your belief then? Are you in favor of congressional term limits or are you opposed to them?

[14]

MS. CROW HALCOMB: I will object to the question as not likely to lead to the discovery of admissible evidence in this lawsuit. Her position as to how she feels about term limits is absolutely unrelated to any of the issues raised by Mr. Gralike.

Q. (By Mr. Lombardi) You can still answer the question. The objection is for the Court.

A. I do have a personal position but it does not influence any of my official acts.

Q. What's that position?

MS. CROW HALCOMB: If my client doesn't want to answer the question in this form, I don't think she has to. This has nothing to do with this litigation. This is her personal belief. This lawsuit does not affect any of her personal beliefs and you're asking her to take a political position today in sworn testimony. That's her private information.

MR. LOMBARDI: Well, her personal belief goes to any potential bias or --

MS. CROW HALCOMB: And she has already answered that question, that it has not had any impact on her official duties.

MR. LOMBARDI: Well, this is **[15]** discovery.

Q. (By Mr. Lombardi) Ms. Cook, what is your personal belief in regard to federal congressional term limits?

A. I believe that federal congressional term limits are appropriate only in certain circumstances.

Q. And what would those circumstances be?

A. Only when I think the people believe that someone has stayed too long and they have gone too far in terms of their incompetency. I have not ever established any opinion -- fixed opinion about what those limits would actually be.

Q. I assume you voted in the November '96 election?

A. Yes, I did.

Q. Did you vote in favor of Article VIII or against Article VIII?

MS. CROW HALCOMB: I think that's private information. That is not discoverable. Asking her how she voted is absolutely irrelevant to this litigation.

A. I voted against this and I'll tell you that because I thought the bill was poorly worded.

Q. (By Mr. Lombardi) And specifically what about it -- were there specific sections that you **[16]** thought were poorly worded?

A. Well, I think that the bill as a whole is indistinct in offering any kind of process for someone in my position to follow through with it.

Q. So, if I understand what you're saying, it doesn't give you enough direction to determine how to administer the bill. Is that what you're saying?

A. Well, I think it puts me in an untenable position for the reason that I will have to make those determinations without the bill -- the amendment, excuse me, being more distinct about it and that places me in a position to be sued from either side at every turn, every decision that has to be made throughout the amendment.

Q. Well -- and I mean --

A. So, that -- and the way I voted has nothing to do with how I really felt about the issue of term limits.

Q. Right. And I understand that. And the vagueness of the bill is -- of the article is a lot of what we're here about.

A. (nods head)

Q. The term limits group is not providing you with....

* * *

[21]

A. -- to Washington to see these positions that might have been taken by the incumbents and things like that. So, there was some general investigation going on early about that. And that's about all I can think of in respect to specific research issues in the early going.

Q. You mentioned litigation in other states. Do you recall which states you were monitoring?

A. Well, all of those that passed the amendment that we have, or something very similarly worded. And we have continued to monitor that, the progress of that litigation.

Q. From time to time your office promulgates regulations in regard to enforcement of state laws or constitutional amendments, is that correct, in regard to elections?

A. No, it is not correct.

Q. I appreciate you correcting me on that then. To promulgate guidelines for candidates on how to comply with the laws, the election laws within the state of Missouri.

A. We try to offer people specific suggestions in response to any request that's made and we do try to in advance of certain specific activities give general understanding, either by a press [22] release or by posting things outside our office or whatever, in order to give people a good understanding of what to expect. But we do not have the authority to pass actual rules and regulations.

Q. Has your office prepared any press releases or any other documents explaining to potential candidates how to comply with Article VIII?

A. No, we have not.

Q. Do you have any plans to prepare any such press releases or guidelines to candidates for compliance with Article VIII?

A. Well, we will be preparing the same thing we did last time, which is kind of an overview of the candidate filing process, and this will be included as part of that. The Article VIII issues will be new versus what we did last time. There are some other changes, too, that affect this particular document that we produced a few days in advance last time of the beginning of candidate filing that was incorporated in a press release. We posted it at both of our offices and tried to make people aware generally of what we thought would be the process by which they would go in terms of candidate filing. [23] This will be part of that piece this year.

MR. LOMBARDI: Miss Halcomb, just for our background, could you get a copy of last year's --

A. Two years ago.

Q. (By Mr. Lombardi) Thank you.

MR. LOMBARDI: -- press release for candidates on these guidelines.

A. I think it's on the Internet.

Q. (By Mr. Lombardi) Okay. Do you have a web page on the Internet yourself?

A. Yes. It's mosl.sos.state.us and all of our press releases are there.

Q. Dating back through the 1996 election?

A. I think so.

MR. LOMBARDI: I'll check to see if it's there. If I can't find it, I'll get back to you on that.

MS. CROW HALCOMB: Okay.

Q. (By Mr. Lombardi) To date have -- has there been any draft as to what you will release or the guidelines that you'll provide to candidates?

A. No, there has not.

Q. Do you have a timetable for preparing those [24] guidelines?

A. No. We don't really work that formally in our office.

Q. That's absolutely fine. Is someone in your office in charge of drafting those guidelines?

A. Jim McAdams as our elections deputy is ultimately responsible for all things associated with candidate filing.

Q. Has there been any discussion in your office of waiting for the Court's decision in this case, in the Gralike case, before preparing those guidelines?

A. Absolutely not. That would be a very dangerous thing to do.

MS. CROW HALCOMB: And, again, you're directing your comments to what she knows?

MR. LOMBARDI: Right.

A. Well, I'm sorry. That's true. I have not participated in any such discussions. It's possible somebody else may have but I certainly hope not.

Q. (By Mr. Lombardi) Well -- and all I want is your knowledge. You don't have to guess what's in other people's minds. Last year do you recall when those....

* * *

[37]

Q. ...that stand out in your mind, before we get into the specifics and we will get into specifics, as being provisions that you have to guess at the meaning of?

A. Well, I of course don't ever want to say I'm going to guess at the meaning of anything but the matter that concerns me, sort of what I think a lot of people have addressed and that is the issue of these votes in Congress. And at what point does a Secretary of State determine that the designation goes on the ballot and does not based on somebody breaking their leg on the way to a vote and not making the vote, et cetera. Lots of different fact situations that we could conjure up that could fly in the face of a literal translation of the actual words in this amendment.

Q. And the article itself doesn't give you guidelines, for example, on how to determine whether someone should get the ballot designation if they break their leg on the way to a vote?

A. There is no escape clause in this amendment that I can find.

Q. So, the answer to my question is, yes, it [38] doesn't give you assistance in that regard, correct?

A. Well, I think there are some other things in there that you could utilize as assistance and it is the overall idea that Congress -- a member of Congress is required to support the language of this amendment and the concept of the term limits as outlined in that language. And that may be some assistance.

Q. Okay. And we'll get into specifics in just a minute here. And, in fact, why don't we just dive in right now.

(WHEREUPON, EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

Q. (By Mr. Lombardi) Ms. Cook, I've placed in front of you what's been marked as Exhibit 2 to your deposition. That is a copy of Article VIII that's been provided to me by your counsel. I want to ask you some specific questions about it. First, have you seen this copy of Article VIII before?

A. Yes, I have.

Q. And this Exhibit 2 is in fact Article VIII, correct?

A. It appears to be a photocopy of our own [39] Constitution of Missouri publication for the Secretary of State's office.

Q. Which we've previously defined in the deposition as Article VIII?

A. Yes. These pages include Article VIII.

Q. If you would look at Article VIII, Section 17, subsection (2)(a), and it talks about --subsection 2 starts off saying, "All primary and general election ballots shall have printed the information 'Disregarded Voters' Instructions On Term Limits' adjacent to the name of any United States Senator or Representative who: fails to vote in favor of the proposed Congressional Term Limits Amendment set forth above when brought to a vote." In reading that, is it your understanding that the ballot designation would be placed next to a Representative's name if he or she abstains from a vote on the term limits amendment?

MS. CROW HALCOMB: I would object to an improper hypothetical. Furthermore, this is information regarding incumbents. Mr. Gralike is not an incumbent. These issues are not issues raised by your lawsuit. The witness can answer to the extent that she has knowledge. [40] Calls for speculation and legal conclusion.

Q. (By Mr. Lombardi) You're in charge of enforcing this amendment, Article VIII, correct?

A. I am in charge of enforcing -- I guess enforcing it may not be a good term, though, Gregg.

Q. What's the language here? It says you're responsible to make accurate determinations as to whether a candidate for the Federal Legislature shall have the ballot designation put next to their name, correct?

A. That's what this says.

Q. And certainly that's your understanding of Article VIII?

A. I consider myself ultimately responsible to determine designations with respect to congressional candidates.

Q. And in making that determination, if someone abstains from a vote on the term limits, will they be designated as having disregarded voters' instructions on term limits?

MS. CROW HALCOMB: Same objections.

A. And I haven't reached an ultimate conclusion about that because I am waiting a complete review of all the facts with respect to any one candidate.

* * *

[77]

...candidate filing piece where we will pronounce in this document that we provide a press release what will transpire with respect to candidate filing.

Q. And you'll say in that press release where you will make the decision and how you'll publish that decision?

A. Right. Now, admittedly, it's also part of our bill that we are submitting to the Legislature and, if the Legislature passes it, then this will be clear at that point in time.

Q. Has your office published any requests for public comment on whether candidates are to receive the designation or not?

A. Not that I'm aware of.

Q. Do you anticipate holding any hearings on that issue?

A. I have no plans for that at this point in time.

Q. Has there been any contact between your office and the Missouri Supreme Court to establish a procedure for hearings before the Missouri Supreme Court of challenges to your determinations?

A. No.

Q. Has your office made any formal request to the [78] Missouri Attorney General's office for any interpretation of Article VIII?

A. No.

MS. CROW HALCOMB: Objection as vague and ambiguous.

Q. (By Mr. Lombardi) Is it your understanding --or, rather, your reading of Article VIII that any challenge to Article VIII must be filed in the Missouri Supreme Court?

A. There is a provision for a right to appeal and it is my understanding that the Supreme Court can hear appeals, and that is set forth in Section 19, subsection (7).

Q. Is it your reading of Article VIII that any challenge to the article must be brought in the Missouri Supreme Court?

MS. CROW HALCOMB: I would object as calling for a legal conclusion and it is speculation.

A. I have to say that I don't think that I see anything that specifically states it's exclusive but I haven't looked at the laws of legal interpretation -- statutory interpretation in a good long while and I'm not sure what that really means.

[79]

Q. (By Mr. Lombardi) There is a provision, let's see, that says that if a candidate doesn't file a challenge to your determination within five business days in the Missouri Supreme Court, they will have waived any right to appeal your decision, correct?

A. Interestingly enough, in subsection (5) it says that. But in subsection (6) it is not the same. So, depends on which way the designation goes.

Q. I'm looking at subsection (6) and it says that candidates may appeal such decision within five business days to the Missouri Supreme Court as original acts or shall waive any right to appeal such decision.

A. Well, I don't think that it's specifically exclusive there, although, I don't know what that really means in terms of a legal interpretation. Please don't take my word on that.

Q. Sure. But as far as administering the article, if a candidate, for example, files an appeal of your determination in United States District Court in Missouri, does it within five days, will you act -- take action assuming that the **[80]** candidate has waived their right to appeal?

MS. CROW HALCOMB: I will object. Calls for speculation, it's an improper hypothetical and calls for a legal conclusion.

A. I have no opinion on that at this point in time, that's for sure.

Q. (By Mr. Lombardi) You haven't made any decision as to how you'll act on that?

A. Not only that. I'm not sure that that will be my decision to make at all.

Q. From your reading of Article VIII, does Article VIII regulate the time of elections at all?

A. The time of when the election shall occur?

Q. Right.

A. I don't see any way it has any affect on that.

Q. And I agree with you on that. Does Article VIII regulate the manner of elections at all?

A. Not that I see it does.

Q. Does it regulate the place of elections at all?

A. Not that I note anywhere.

MS. CROW HALCOMB: I want to be specific. We're talking about the Article VIII that we have designated as Sections 15 through 22?

MR. LOMBARDI: Right.

[81]

I'm at a good breaking point right here so if you want to break right now, that would be great.

MS. CROW HALCOMB: How much do you have to cover?

MR. LOMBARDI: We have to go over the specific document. I would say an hour and a half or two.

MS. CROW HALCOMB: I don't know that I can do that. Our original agreement was for two hours. We produced Secretary Cook for two hours.

MR. LOMBARDI: And how far --

MS. CROW HALCOMB: How much longer? Can you be specific? Are you going to need --

MR. LOMBARDI: I can't be specific but I would say -- I mean, I'll shoot for an hour and a half, two hours. I'm going to do my best to be fast and in the time that you're away I'll go back through my questions and try to winnow out any that aren't needed.

MS. CROW HALCOMB: We can try to be back by 1:30. Is that acceptable to you, Secretary?

THE WITNESS: I'd like to do that if **[82]** we can do that. I'll cut my stuff short and just get back and we'll do what we can as quickly as we can.

(Whereupon, there was a lunch recess.)

(WHEREUPON, EXHIBIT NO. 3 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

Q. (By Mr. Lombardi) Ms. Cook, I placed before you what's been marked as Exhibit 3 for your deposition and that is a copy of a newspaper article in regard to the term limits amendment. And it quotes you. Were you interviewed at some time apparently in early 1997 by a Mr. Wolfe in regard to the term limits amendment?

A. My best recollection about this -- and I didn't see this article when it came out until several months later, apparently, was when I first saw it. But my best recollection is that he carried on a discussion with me when we had a press conference on something else so I didn't realize I was truly being interviewed. But that's okay. That's the way the press is, right?

Q. And it quotes you in the third paragraph as saying -- it refers to the term limits amendment is not well considered. not well written. Did you make that statement?

[83]

A. I'm certain I did.

Q. Are there ways in which it's not well considered and not well written other than what you've testified about this morning?

A. I probably could go through it and say that there are other ways but the real problem is that there is no guidance in my mind for a process as the person who is supposed to apply this amendment. That's my real concern with it primarily.

Q. And when you say there's no guidance for a process, you mean a process for determining who will get the designation placed next to their name, correct?

A. Yes. And other processes. I mean, ultimately that's where we're headed, do they get the designation or don't they, but there are several different steps that are taken in there that seem to be indefinite.

Q. Can you tell me what those steps that you're talking about are?

A. Well, I think in the -- in the application process for signing up as a candidate there's some question about -- there could be some question about the pledge itself and exactly how **[84]** to go about that. I mean, it's not a huge issue. That's probably the least troublesome from my standpoint.

Q. Just to nail that one down, are you talking about the issue of whether a non-incumbent actually declines to take the pledge? I think in the legislation there was some discussion --or it may have been the memo that went with the legislation could have interpreted -- the article could be interpreted so that if a candidate who was a non-incumbent just refused or didn't take any action in regard to the term limits pledge, then it would be hard to tell whether or not the designation should be put next to his or her name, is that correct?

A. Well, there is a distinct statement in there about that, yes.

Q. I'm sorry to interrupt you.

A. That's probably maybe the easiest one. It goes on and on in all of these subparagraphs on the issue with respect to the incumbents. Of course, we've kind of gone through that. It makes it very difficult for us to feel that we can pick a paragraph and make a proper and appropriate determination from just picking out **[85]** a paragraph. I recognize that that's true in a lot of legislation. At the same time, I, as Secretary of State, would have appreciated having a stronger procedure established within the amendment itself.

Q. And stronger guidance to you?

A. Clearly. Procedure, guidance, call it whatever you may. It would have been better for me had I been told exactly what to do.

Q. And you testified this morning about trying to make determinations based on the spirit of the article. Does Article VIII, from your reading of it, provide clear, objective measurements for you to determine whether the ballot designation will be placed next to a candidate's name when they abstain from a vote on the term limits amendment?

A. There's no way you could read in here and get an answer to that question I don't think.

Q. Does Article No. VIII -- Article VIII provide clear, objective measurements for you to make a determination whether the ballot designation will be placed next to a candidate's name if they abstain from a vote on a term limits amendment?

[86]

MS. CROW HALCOMB: I object. We've asked this morning. Asked and answered.

A. I think that's so, that we've definitely answered that question and I just don't think there's much way -- as I said this morning, I don't think that we can. And I said this with respect to everything also this afternoon, on each of these paragraphs, I dont think it's safe for me to just read one and say that's the ultimate answer right there.

Q. (By Mr. Lombardi) You mean the ultimate answer as to whether or not -- if they comply with that one provision or don't comply with that one provision, whether the ballot designation will be placed next to their name?

A. Clearly whether they comply, that's not good enough because each one of these has an o-r at the end of it. But if they do comply, it's still is an issue of did they comply adequately and you still get into that indefiniteness that bothers all of us.

Q. Does Article VIII provide clear, objective measurements whether -- clear, objective measurements for you to determine whether the ballot designation will be placed next to a **[87]** candidate's name if they vote for some term limit amendments but not all term limit amendments that are placed before them?

MS. CROW HALCOMB: I will object again as asked and answered.

A. If I understand fully your question, I think I'm going to say that I haven't made an ultimate decision about that. But, in reality, the way I look at it today is, I think I've got to go beyond that to make an ultimate determination. Is that a fair characterization for you?

Q. (By Mr. Lombardi) And before you talked about, again, the spirit of the article as opposed to the specific language of the article and what I'm asking is, in the specific language of the article, is there a clear, objective measurement for you to make that determination of, say, for example, if a legislator votes for the term limits amendment three times but doesn't vote for it a fourth time?

A. A fourth time?

Q. Does the article provide you with clear, objective measurements for you to make the determination of whether the ballot designation will be placed next to that candidate's name?

[88]

MS. CROW HALCOMB: I'll object as an improper hypothetical. It calls for speculation and calls for a legal conclusion.

A. Of course, this doesn't address that fact situation.

Q. (By Mr. Lombardi) And, so, the answer is that it doesn't provide such clear, objective measurements, correct?

A. Not as to three votes in favor and one vote against.

Q. Does Article VIII provide clear, objective measurements for you to determine whether the ballot designation will be placed next to the candidate's name who doesn't propose the amendment in every session of Congress?

MS. CROW HALCOMB: Objection. Calls for an improper hypothetical, calls for speculation and draws a legal conclusion.

A. I think I answered that this morning but also I will say I'm today taking the position that it is not adequately addressed here. There are a lot of people who feel differently and feel it's very clear. So, this is just my personal opinion.

Q. (By Mr. Lombardi) Sure. Although you are the **[89]** person who has to implement the article. Ms. Cook, does the article provide clear, objective measurements for you to determine whether or not the ballot designation will be placed next to a candidate's name -- scratch that. I had a really good buildup.

MS. CROW HALCOMB: One more gone. Moving along.

Q. (By Mr. Lombardi) Does Article VIII provide clear, objective measurements for you to determine what it means for a candidate to reject the laws of term limit amendments?

MS. CROW HALCOMB: Objection. Calls for an improper hypothetical, calls for speculation and asks for a legal conclusion.

A. Basically, that's in the same category of what I've been answering and that is that reasonable persons could disagree on that point I think. And my view of it is that I would not ever want to make a decision based upon that simple statement within the framework of this amendment.

Q. (By Mr. Lombardi) Does the amendment provide clear, objective standards for you to determine how public comments will be used to determine **[90]** whether the ballot designation will be placed next to a candidate's name?

A. Again, I answered that this morning but not only -- I not only feel that it does not but I also think it would be inappropriate if it did. And I think I told you that this morning as well.

Q. Back to Exhibit 3. In Exhibit 3, the bottom of the first column on the left there it says that you asked the Legislature for $40,000 for monitoring for purposes of implementation of Article VIII. What was that money needed for?

A. Well, that would be something I would say probably wasn't very distinct in this article. And in my mind the $40,000 involved staff, the cost of staff and also the cost of travel and expenses in determining the records basically of the incumbents. But it also involved a lot of other things from my perspective in terms of the legal time and all that in our office and concerns about that. And in fact of that 40,000 in the request, the fiscal -- well, whatever you call it, the fiscal note, it identified some attorney time and we ended up absorbing that by the hire of the corporate attorney that we were given this year as an additional person on the **[91]** staff. And I had noted that that would be absorbed. So, you know, it's not a new $40,000. It is how much staff does it take for you to accomplish this.

Q. Okay. In the legislation that you're putting before the General Assembly this year are you also asking for more funding?

A. I'm certain we are. We haven't gotten to the fiscal note process of this bill this year and that would be a little change from last year because we've got the new corporate counsel and that frees up additional people for our current general counsel.

Q. So, the request for funding would be less than it was last year?

A. Well, actually, the request for funding this year is almost irrelevant because -- at least for this year it is because clearly we're going to be handling this in this fiscal year and what occurs next year is next year and the fiscal note's sort of irrelevant to us. We'll do it because we need to inform the General Assembly of the cost of any bill but it would certainly be more of an issue for two years down the road and I'd want to go through one of these **[92]** processes before I felt really comfortable to know where we are on that.

Q. So, your office is just going to have to divert money from something else to pay for the administration of this?

A. It doesn't divert so money so much as it's diverting staff time and it's just a real problem for us in managing all of the issues that we have to address in our office.

Q. Looking at this Exhibit 3, on the second column it quotes you saying the amendment could be read so strictly that someone filibustering an agricultural bill could be accused of trying to keep term limits from being considered. Is that an accurate quote of you?

A. I don't remember. Probably is. I certainly wouldn't question Jim Wolfe's quote of me. And, of course, that is just referring to how some people would look at it and try to make it into something that they want as a result.

Q. You don't have any reason to believe that that's an inaccurate quote of you?

A. No, I certainly don't. I think it is an accurate quote of me. I just don't independently remember it right now.

* * *

[101]

Q. ...Article VIII, which is Exhibit 2 before you, if you can just read that over to yourself for just one second. Or however long it takes you to read it.

A. (complies)

Q. Do you consider that term limits pledge to be contractual in nature?

MS. CROW HALCOMB: Objection. Calls for a legal conclusion.

A. I think it's immaterial what I think about what it is. I think it's a ministerial statement of what somebody's supposed to sign if they want to avoid a designation on the ballot.

Q. (By Mr. Lombardi) Has there been any discussion in your office as to whether your office or the State of Missouri could take legal action to enforce that pledge if a candidate doesn't abide by it?

MS. CROW HALCOMB: Objection. Calls for speculation.

A. There's been no such discussion.

Q. (By Mr. Lombardi) That pledge says that the candidate pledges to support term limits and to use all my legislative powers to enact the proposed constitutional amendment. What does **[102]** the term, "all my legislative powers" mean?

MS. CROW HALCOMB: Objection. Calls for a legal conclusion.

A. Again, for me it would mean that I do my best effort, if I were signing this pledge, but obviously it can mean something very different to the next person who's making the pledge

Q. (By Mr. Lombardi) Does Article VIII from your reading of it provide a clear, objective standard as to what "all my legislative powers" means as it's used in the term limits pledge?

MS. CROW HALCOMB: Objection. Calls for speculation. Calls for a legal conclusion.

A. I don't see any definition in this amendment.

Q. (By Mr. Lombardi) Do you believe that the term limits -- or, rather, the ballot designation would handicap the candidates who have that designation placed next to their name?

A. I think that most people believe it would and I certainly would assume that if the polling is as strong as people claim it is and all this sort of thing. It would have an affect on the populace when they came in to vote if they don't have other information.

Q. And the affect on the populace that you think it **[103]** would have would be negative to the candidate that had that designation next to their name?

A. That's what my understanding the polling is showing.

Q. What polling are you referring to?

A. And, again, I don't have anything that I've read that says this. I just understand that term limits is very poplar, that the concept of term limits is very popular with Missouri voters and that is of course evidenced by the strong vote in favor of this amendment last year I think.

Q. Are you aware of any compelling state interest that is served by Article VIII?

MS. CROW HALCOMB: Objection. Calls for a legal conclusion.

A. Well, I think if the public wants something, that's a compelling interest. I believe very strongly in our Democracy and the fact that people should be able by the initiative process have access to creating a law which follows their desires. If the Legislature won't provide it to them, they have this other outlet in Missouri and I think it's a valuable asset for us. It is an issue of giving people their own chance and their own shot at getting government **[104]** to respond to them. I don't know if that adequately answers your question but I feel pretty strongly about that.

Q. And the will of the Missouri people as you see it embodied in Article VIII is to have a constitutional term limits amendment, is that correct?

A. Clearly, they voted in favor of this amendment. They want this amendment.

Q. And it's your understanding of the purpose of the amendment that there be a federal constitutional term limits amendment, is that correct?

A. That's what it says I think in essence.

Q. Yes. In regard to the ballot designation that we've been talking about, is there any plan by you or anyone in your office to put any explanation on the ballot as to what "disregarded voters instructions on term limits" means?

A. We haven't discussed this but I can say that today there would be -- there certainly is no plan and I don't think we would do that. We

would need to have authority from the Legislature or this petition to do anything....

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Caption Omitted]

DECLARATION OF MIKE HARMAN

I, Mike Harman, declare under penalty of perjury that the following is true and correct:

1. I am a citizen of the United States of America.

2. I am over the age of twenty-five and I have been a resident of the State of Missouri for more than seven years.

3. I am a candidate in the upcoming election for the House of Representatives of the United States Congress (the "House"). I have also previously been a registered candidate for election to the House.

4. I filed a timely registration to run for the House with the Missouri Secretary of State's office. Accordingly, my name will appear on the ballot for that election.

5. I oppose the proposed constitutional amendment contained in Article VIII of the Missouri Constitution, which was adopted by popular vote in November of 1996 and believe that having the designation "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" placed next to my name on the election ballot would hurt my chances for election to the House.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ [Mike Harman]
Mike Harman
6-3-98

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Caption Omitted]

DECLARATION OF DONALD GRALIKE

I, Donald James Gralike, declare under penalty of perjury that the following is true and correct:

1. My name is Donald J. Gralike and I am the plaintiff/appellee in the case captioned Gralike v. Cook.

2. In February I became a candidate for the U. S. Congress in the seat currently held by Richard Gephardt.

3. I have withdrawn from the election effective May 18, 1998 and my name will not appear on the ballot. I have reached this decision entirely independent of this litigation.

4. After giving the matter further consideration, I have withdrawn with the hope that my withdrawal from this year's election will further solidify support of my candidacy in the year 2000. I have been a longtime Democrat and supporter of Representative Gephardt. I believe Representative Gephardt's support will be critical for my 2000 candidacy. In order to make it more likely that I will receive Richard Gephardt's and his associates' support in the 2000 election, I have withdrawn from the race.

5. I think there is a strong probability that Representative Gephardt will be a candidate for President in the year 2000. I believe his chances of election are excellent, therefore, it seemed in my best interest to wait until the year 2000 to have a fully engaged campaign for U. S. Congress.

6. I do want to run for Congress in the event Representative Gephardt seeks other office or his seat otherwise becomes available.

7. I have every intention of seeking this Congressional Seat as soon as it is vacant. I declare under penalty of perjury that the foregoing is true and correct.

/s/ [Donald James Gralike]
Donald James Gralike